ORIGINAL

**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**



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| In the Matter of | ) | |
| | ) | |
| Implementation of the Local | ) | CC Docket No. 96-98 |
| Competition Provisions in the | ) | |
| Telecommunications Act of 1996 | ) | |
| | ) | |
| To: The Commission | ) | |



# COMMENTS OF CABLE & WIRELESS, INC.

Of Counsel

Rachel J. Rothstein
Ann P. Morton
**CABLE & WIRELESS, INC**
8219 Leesburg Pike
Vienna, Virginia 22182
(703) 734-4439

Danny E. Adams
John J. Heitmann
**KELLEY DRYE & WARREN LLP**
1200 19th Street, N.W.
Washington, DC 20036
(202) 955-9600

Its Attorneys

0+15

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## SUMMARY

Cable & Wireless ( 'CWI") is the nation's sixth largest interexchange carrier, with annual revenues of $700 million, and has begun to provide competitive local exchange services in three states, with many more to follow. CWI will be critically affected by the matters under review in this proceeding.

### 1. Interconnection, Unbundling and Resale Policies Should Be Nationally Uniform

**CWI wholeheartedly supports the Commission's tentative conclusions that a national policy framework is critical to the timely development of competition in local services.** Without national uniformity at a reasonably specific level, new entrants will face a multiplicity of requirements and regulations as they attempt to establish themselves in each state. Importantly, these differences will not simply be variations in methods of regulation; instead, without national guidance, differing state regulations will require networks to be configured on a state-by-state basis, accompanied by widely varying service options and prices. The inevitable delay and expense which would result from such a situation would serve as a very substantial barrier to entry into the local market. Some potential entrants might be excluded entirely by the demands of state-by-state network configuration, service design and rate structuring, while the underlying costs would be greatly inflated for those companies that did manage to enter the market.

**The need for national uniformity extends to all three of the important areas under consideration in this docket: interconnection, network unbundling and resale.** In each case the considerations are the same. Telecommunications services are inherently a

national, even international, undertaking. To be cost-effective (a result very much in the interests of the consuming public), telecommunications carriers must have access to the same set of points of interconnection, the same network elements, and the same services for resale, in each location. To compete effectively for a national account, for example, service to a brokerage firm like Merrill Lynch, CWI must be able to plan its proposal with certainty, predictability and at a reasonable cost. Only national guidance from the FCC can provide this uniformity within the very short time-frames contemplated by the '96 Act in opening all markets to all comers.

**The '96 Act clearly contemplates FCC guidance toward national uniformity and grants the Commission the necessary authority for this purpose.** Section 251(d)(1) directs and empowers the FCC to "complete all actions necessary to establish regulations to implement the requirements of this section." Moreover, Section 251(d)(3) preserves state authority over LEC access and interconnection obligations only to the extent they are (1) consistent with the requirements of Section 251 and (2) do not substantially prevent implementation of its requirements and purposes. Read together, these provisions obviously intend to establish the FCC as the overseer of national standards for interconnection, network unbundling and local resale.

### 2. Network Interconnection and Unbundling Should Maximize Flexibility for Purchasers

**CWI strongly endorses the Commission's tentative conclusions that ILECs must be required (1) to make interconnection available to any requesting carrier at the same network points previously provided to itself or to others, and (2) to interconnect at any**

**point previously accommodated by any other ILEC employing similar equipment or technology.** This approach w ll provide a proper foundation for implementation of the mandate of Section 251(c)(2)(B), which obligates ILECs to interconnect "at any technically feasible point."

**In implementing this requirement, the Commission should establish a principle that all requests for interconnection are presumptively acceptable unless the ILEC meets the burden of justifying its refusal.** This will further the goals of the '96 Act by establishing technical infeasib lity as the basis for any denial of an interconnection request, and will place the burden of proof on the party which (a) is claiming infeasibility and (b) controls the critical information about the local network needed to determine feasibility.

**CWI also endorses FCC establishment of minimum lists of specific points of interconnection and unbundled elements which must be made available immediately.** This guidance will prevent the months of expense and delay which will be required if the initial lists are left to litigation through state PUCs and the courts. In so doing, the Commission will further the principal goal of the '96 Act, the expeditious establishment of competition in local telecommunications.

**CWI urges the Commission to make clear that AIN features are included in the unbundling and interconnection requirements.** In particular, unmediated access to the SMS database, the service creation environment and the SSPs and SCPs of the AIN will be increasingly important. Without these fundamental building blocks, competitors will be grossly disadvantaged in the r ability to provide important new services and features.

**The Commission should make clear that the information and processing needed to make unbundled elements useful must also be provided by the ILECs.** Unbundling and interconnection are not goals in and of themselves; rather, the intent of the requirement is to remove barriers to entry and encourage the rapid development of local competition. Thus, unless the interconnection and unbundling are accompanied by the necessary information and processing functions needed to make them work (e.g., billing information, order processing), the goals of the Act will be thwarted.

**The Commission should establish TSLRIC as the national pricing methodology for unbundled network elements.** The Act rejects traditional cost-of-service regulation, with its detailed examination of historical carrier costs and rate bases. TSLRIC complies with this directive and provides the optimum pricing approach for unbundled elements. This approach properly includes all the costs associated with the provision of the service in question, but excludes items which historically inflated prices and inhibited competitive entry.

**CWI strongly disagrees with the suggestion that IXCs cannot purchase unbundled elements or wholesale services for use in originating or terminating interexchange calls.** The '96 Act does not limit the use which a carrier may make of the unbundled elements or wholesale services which it purchases, and any such restrictions are antithetical to the Act's goal of removing barriers to entry and artificial divisions between services.

### 3. Resale Services Should Be Maximized and Priced at Reasonable, Nondiscriminatory Levels

**The Act requires ILECs to offer all retail services provided to non-carriers for resale at wholesale rates and CWI strongly supports the Commission's tentative conclusion that any restrictions on resale "should be quite narrow."** Resale will be the initial means of providing local services for nearly every market entrant, and the only one ever used by many. Further, the presence of unlimited resale serves to prevent attempts at anticompetitive or predatory pricing. As a consequence, the Commission should make clear that the '96 Act precludes all restrictions on resale without a compelling justification.

**The existing USOA accounts should be used as a starting point to identify "costs avoided" for purchases of establishing wholesale prices.** The USOA provides an excellent baseline point for the identification of costs which should not be included in the wholesale prices offered to resellers. The Commission should review the USOA to determine all accounts which cover items not needed in the provision of wholesale services (e.g., sales and advertising expenses) and direct that those costs be subtracted from the retail price in setting wholesale rates.

**Any "administrative costs" added to wholesale prices should be reasonable, and the Commission should make clear that any suggestion that those costs equal or exceed the actual costs avoided is prima facie unreasonable.** The costs required of the ILECs to comply with their resale obligations under the '96 Act are minimal and any suggestion to the contrary should be taken for what it is -- a transparent attempt to avoid compliance.

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## COMMENTS OF CABLE AND WIRELESS, INC.

Cable and Wireless, Inc. ("CWI"), by its attorneys, respectfully submits these comments regarding the Federal Communications Commission's ("FCC" or the "Commission") implementation of the local competition provisions in the Telecommunications Act of 1996 ("'96 Act")[1] in the above-captioned matter.[2] As explained further below, CWI supports the Commission's tentative conclusion that national standards and guidelines with regard to interconnection, unbundled elements and resale are necessary to the prompt development of a fully competitive marketplace for the provision of local telecommunications services In particular, as a "third tier" interexchange carrier ("IXC"), CWI is especially interested in the establishment of national guidelines to ensure the uniform, nondiscriminatory availability of local resale opportunities at reasonable prices.

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[1] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) *(to be codified as* 47 U.S.C. §§ 151 *et seq* ) [hereinafter "*'96 Act*"].

[2] *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, FCC 96-182 (rel. Apr. 19, 1996) [hereinafter "*Notice*"].

# I. INTRODUCTION

## A. Statement of Interest

CWI is an interexchange carrier primarily serving business customers throughout the United States. It provides switched and private line data and voice communications, Internet access and basic local exchange service. With revenues of nearly $700 million in 1995, CWI ranked as the sixth largest domestic interexchange carrier in the nation.[3] Moreover, the company has experienced double-digit growth for the last five years. CWI also is one of the leading members of the Competitive Telecommunications Association ("CompTel"), a nationwide industry association representing competitive providers of telecommunications services.

In many industries, a company with annual revenues equal to CWI's would be one of the dominant suppliers. Telecommunications, however, is not a typical industry. The three largest interexchange carriers collectively hold about 82 percent of that market (AT&T 55%, MCI 17%, Sprint 10%) and have interexchange revenues of $56 billion (AT&T has revenues of $37 billion, MCI $12 billion, and Sprint $7 billion).[4] Moreover, the '96 Act establishes conditions for entry into the interexchange business by the seven Regional Bell Operating Companies ("RBOCs"). The RBOCs have collective revenues of $73 billion and control 76 percent of all U.S. telephone access lines, including virtually all access lines within their

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[3] *Report on Long Distance Market Shares, Fourth Quarter 1995*, Industry Analysis Division, Common Carrier Bureau (March 1996).

[4] *Id.*

respective service areas.[5] The RBOCs carry more than 98 percent of all interexchange access minutes from those lines.

Despite its much smaller size relative to AT&T, MCI, and Sprint, CWI has competed successfully in the *long distance* market in large measure due to effective regulatory policies that reduced barriers to entry. Accordingly, to ensure that smaller carriers such as CWI can enter and compete in the *local* exchange market successfully, it is imperative that anticompetitive conduct by giants such as the RBOCs be prevented. The financial size of the RBOCs, combined with their near total monopoly power over the local exchange, poses a formidable challenge to the Commission as it endeavors to craft implementation rules consistent with the underlying goals of the '96 Act. Significantly, the Commission's effectiveness in this effort will determine, in large part, whether smaller interexchange competitors, like CWI, also can compete successfully in the local exchange market and thereby ensure their long-term business viability.

### B. The Importance of Interconnection, Unbundling and Resale [¶¶ 172-77, 196-97]

One of the core goals of the '96 Act, and the reason for this rulemaking, is the implementation of rules and policies that will govern the emergence and development of effective competition in the provision of local telecommunication services. As a *quid pro quo* for initiation of local competition, the '96 Act also repeals the AT&T Consent Decree,

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[5] *FCC Statistics of Communications Carriers*, Tables 2.5 and 2.9 (1994-95).

thereby lifting the prohibition on RBOC entry into the interexchange services market.[6] Conventional wisdom has it that the resulting market evolution will be toward vertical service integration, commonly known as "one stop shopping." The market segmentation that to-date has separated local exchange carriers ("LECs") from IXCs soon will disappear and be replaced by a group of telecommunications companies offering single integrated packages of services.

The establishment of open and effective policies governing interconnection, unbundling and resale will be critical to fulfilling this Congressional mandate. The Commission only need look to the evolution of the interexchange market for proof of the vital role these items will play in spurring competition. Interconnection and network unbundling (then called "piece out") were major battlefields in the regulatory arena of the 1970s, when interexchange competition was first initiated.[7] Unrestricted resale helped to launch a highly competitive U.S. interexchange market with hundreds of service providers.

Today, there are virtually no barriers to entry into the long distance business. Switchless resale and prepaid calling cards, for example, provide opportunities for interexchange resellers that have very little start-up capital and limited technical expertise. As a result, companies with an existing local service business, such as the RBOCs, have a wide variety of options open to them to facilitate an easy entry into the long distance arena.

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[6] *United States v. American Tel & Tel.*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983), *vacated sub nom. United States v. Western Elec. Co.*, 568 *Slip op.* C.A. 82-0192 (D.D.C. Apr. 11, 1996).

[7] *See, e.g., Bell Tel. Co. of Pa. v. FCC*, 503 F.2d 1250 (3d Cir. 1974), *cert. denied*, 422 U.S. 1026 (1975); *MCI Tele Corp. v American Tel. & Tel.*, 94 F.C.C.2d 332 (1983).

Upon being authorized to provide in-region interexchange services, the RBOCs can begin full scale national resale of interexchange services virtually overnight. At that time, at least within their regions, the RBOCs will compete with CWI and other carriers offering integrated packages of local and long distance services. To sustain a level competitive playing field, the Commission must ensure availability of reciprocal opportunities in *both* the interexchange and local services markets. Unless CWI and other IXCs have the same open opportunities locally as the RBOCs have in the interexchange arena, new local entrants will be unable to compete effectively with the incumbent carriers.

Just as the RBOCs will rely on resale for the initial provision of interexchange offerings (at least out-of-region), new local competitors will depend on resale for their first foray into the local exchange market. Over time, resale will be replaced by facilities-based competition for *some* carriers in *some* locations. To make an economically feasible transition from resale to facilities-based local services, carriers will need to rely on the availability of interconnection and unbundled elements. Those policies will alleviate the need to build an entire, duplicative local network before service can begin.

In this new world of one-stop shopping, however, few carriers are likely to operate entirely on their own local facilities *ever*. Even the largest companies—be they AT&T reselling local service or Bell Atlantic-NYNEX reselling interexchange service (and local service outside its region)– will need to rely heavily on resale for decades to operate effectively. In fact, for all but the industry behemoths, resale will be the principal means by which competitors participate in this new industry structure indefinitely. CWI, for example, already an interexchange resale carrier, also must be able to resell local service to compete

with Bell Atlantic-NYNEX in attracting one-stop shoppers in New York City or Washington, D.C.

In short, the importance of the Commission's interconnection, unbundling and resale decisions to the future of competition cannot be overemphasized. CWI is one of the few interexchange carriers actually providing local service on a resold basis to business customers today. The company currently provides local service in New York and Connecticut, and soon will initiate service in California. CWI's experience negotiating with the ILECs, as well as actually provisioning and billing for local service, is reflected in these comments to provide the Commission with information useful in the formulation of national standards for interconnection, unbundling and local resale.

## II. INTERCONNECTION, UNBUNDLING AND RESALE POLICIES SHOULD BE NATIONALLY UNIFORM [¶¶ 26-27, 29-33, 37]

### A. Benefits of Uniform National Policy [26-27, 29-33]

[¶ 26] CWI agrees with the Commission's conclusion that, pursuant to Section 251(d)(1), it must establish a national policy framework to facilitate the timely development of competition in the local services market.[8] In enacting the '96 Act, Congress clearly intended for the Commission to implement a national framework for local competition.[9] National guidelines create the key benefit of uniformity which promotes the swift development of competition by minimizing variations among the states that could stall market

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[8] *Notice* at ¶ 26.

[9] *Id.*; S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996) [hereinafter *Joint Explanatory Statement*].

entry. Without nationally uniform standards, new entrants would be forced to meet a patchwork of varying state approaches on a host of entry issues. By establishing a level of consistency, certainty and predictability, national rules will expedite the transition to competition and provide guidance to states as they set out to implement and administer the fundamental competitive provisions of the '96 Act. This will be especially evident in the more than 30 states that have not yet adopted rules allowing local competition.[10]

[¶¶ 26-27] Thus, nationally uniform rules will contribute significantly to the swift and effective development of opportunities to compete in the local exchange market nationwide. In turn, this will spur rapid private sector deployment of advanced telecommunications technologies and services. Consistent with Congress' intent, these developments should result in lower rates and a broader array of services for consumers.

[¶ 27] As the Commission correctly points out, national rules also are consistent with the nationwide character of the development and deployment of underlying communications technologies.[11] In anticipation of the new competitive era spawned by the '96 Act, incumbents and existing or would-be competitors have long engaged in planning business strategies and network deployment on a nationwide basis. Accordingly, suppliers have developed—and will continue to develop—technologies for deployment in nationally integrated networks. Without national rules, the Commission runs the risk that states will

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[10] *Notice* at ¶ 30, n.43.

[11] *Id.* at ¶ 27.

create multiple and conflicting technical standards that could delay the introduction of new technologies and the overall development of competition in the local services market.

[¶ 30] The Commission also is correct in its assessment that explicit national rules have the strongest potential to enhance the ability of new entrants to attract investment capital.[12] Explicit national rules will provide a level of predictability and certainty that investors need to make meaningful assessments of entrants' business plans. Moreover, these rules will reduce new entrants' capital costs by enabling a potential competitor to plan and configure its various networks uniformly, regardless of the geographic markets it seeks to enter. In addition to minimizing start-up costs, a uniform network design will accelerate innovation and enhance interoperability of networks and equipment, thereby reducing administrative burdens for both ILECs and new entrants alike.

[¶ 30] The cost efficiencies that can be achieved for new entrants employing uniform network configurations are significant. If, in the absence of nationally uniform rules, new competitors were required to modify their networks to comply with a patchwork of different—and potentially conflicting—state regulations, they would incur additional and less predictable expenses. In effect, by raising capital costs and creating investment uncertainty, a failure to implement nationally uniform rules would raise barriers to entry and thereby undermine the pro-competitive goals of the '96 Act.

[¶ 31] Adopting nationally uniform rules will have the added important effect of narrowing the range of permissible outcomes of negotiated or arbitrated agreements between

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[12] *Id.* at ¶ 30.

competitors and ILECs. Thus, the implementation of concrete national standards will have an equalizing impact on the ILECs' superior bargaining position. Furthermore, explicit national rules will provide necessary and consistent guidance to federal district courts charged with reviewing state determinations of whether particular agreements are consistent with Section 251.[13] The absence of such rules could lead to varying or inconsistent decisions by individual district or circuit courts concerning the core requirements of the '96 Act. Nationally uniform rules also will guide Commission determinations of Section 251 compliance for purposes of review of an RBOC's satisfaction of the competitive checklist under Section 271.[14]

[¶¶ 29-33] CWI supports the Commission's assessment that the adoption of explicit national rules to implement Section 251 will not inherently undermine the initiatives undertaken by various states prior to the enactment of the '96 Act.[15] States' experience in this area will be instrumental to the Commission's creation of national guidelines. In fact, portions of some states' rules may be suitable for incorporation into the national rules. Moreover, national rules will not—and must not—unduly constrain the ability of states to address unique policy concerns that might exist within their jurisdictions. However, there are no substantial state-specific variations in technological, geographic, or demographic conditions that call for fundamentally different regulatory approaches. Similar geographic

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[13] 47 U.S.C. §§ 251, 252(e)(6).

[14] *Id.* § 251, 271.

[15] *Id.* § 251.

and demographic differences occur within all states. Thus, the adoption of a state-by-state approach, even in the name of experimentation, would serve no purpose other than to permit the states to set different priorities which could delay the swift introduction of competition that Congress expects to result from its passage of the '96 Act.

[¶¶ 26, 29] By its support for national uniformity, CWI should not be viewed as critical of the state commissions nor skeptical of their capabilities. Many states have done a highly commendable job of opening local markets to competition. CWI contends, however, that even if all 50 states were to enact interconnection and unbundling plans which CWI found individually attractive, the fact that there was great variation among the plans would itself make the overall outcome problematic. Even 50 *excellent* plans are not optimum if they are also 50 *different* plans.

[¶¶ 26, 28] In sum, explicit and uniform national rules are necessary to ensure that the emergence of competition is both timely and robust. With respect to each obligation imposed by Section 251, the adoption of national rules best advances Congress' goal to introduce and develop competition in the local services market promptly.[16] This approach creates the uniform, pro-competitive, national policy framework envisioned by the statute.

### B. FCC Legal Authority for Adoption of National Standards [¶ 37]

[¶ 37] In enacting the '96 Act, Congress provided the foundation to restructure substantially the way in which telecommunications is regulated in this country. Accordingly, Sections 251-53 of the '96 Act supplant the traditional jurisdictional divide between interstate

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[16] *Id.*

and intrastate services by a single, national regulatory scheme in which both the FCC and the state commissions have explici roles.[17]

However, to ensure tha optimal conditions conducive to the rapid introduction and development of competition w ould be created, Congress charged the FCC with responsibility "to complete all actions neces ary to establish regulations to implement the requirements of [Section 251]."[18] Underscoring its intent that a single set of nationally uniform rules would be created, Congress explicitly gave the Commission power to preempt any state statute or regulation that creates a barrier to entry into either interstate *or intrastate* services or that is otherwise inconsistent with the purposes and requirements of the '96 Act.[19] Thus, in enacting the '96 Act, Congress clearly contemplated that the current jurisdictional divide between interstate and intrastate services be replaced by a single, national scheme of regulation and, in Section 25 (d)(1), provided the Commission with the legal authority to create the rules necessary to realize that fundamental objective.[20]

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[17] *Id.* §§ 251-53.

[18] *Id.* § 251(d)(1).

[19] *Id.* § 253(d).

[20] *Id.* § 251(d)(1). Importantly, the Supreme Court's decision in *Louisiana Public Service Comm'n v. FCC*, 106 S. Ct. 1890 (1986), does not limit the Commission's jurisdiction to implement rules pursuant to Section 251. 47 U.S.C. § 251. In that case, the Court ruled that the Commission had exceeded the powers given to it by Congress in Sections 151 and 152 of the 1934 Act. *Id.* 47 U.S.C. § 151 et seq., §§ 151-52. However, the jurisdictional division created by Sections 151 and 152 does not extend to Section 251. *Id.* §§ 151-52, 251. Section 251 contains an entirely new grant of authority in which Congress extended the Commission's jurisdiction to cover *all* telecommunications services. Importantly, the definitions of "telecommunications," "telecommunications service" and "telecommunications

(continued...)

## III. NETWORK INTERCONNECTION AND UNBUNDLING SHOULD MAXIMIZE FLEXIBILITY FOR PURCHASERS [ ¶¶ 41, 50, 56-63, 77-80, 83, 85-119. 123-24, 127, 130, 147-48, 159-65]

### A. The FCC Should Set National Interconnection Guidelines [¶ 50]

[¶ 50] CWI supports the Commission's conclusion that establishing nationally uniform rules for evaluating interconnection agreements is consistent with the '96 Act and would further its underlying goal of opening all markets to competition.[21] By removing the need to comply with a multiplicity of state variations in technical and procedural requirements, nationally uniform rules governing the points, terms and conditions of interconnection will facilitate entry by competitors in multiple states.[22] Moreover, by limiting the possible range of outcomes, nationally uniform rules likely will expedite the negotiations process. As discussed above, in Section 251(d)(1), Congress clearly intended for and gave explicit authorization to the Commission to establish a nationally uniform set of rules necessary for the implementation of the provisions of Section 251.[23] Without nationally uniform rules to provide guidance to the states in evaluating interconnection

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[20](...continued)
carrier" are defined, in the '96 Act, without reference to jurisdictional boundaries. 47 U.S.C. § 153(48-9), (51). Thus, *Louisiana* does not control the Commission's implementation of rules under Section 251—the Commission has the authority to regulate intrastate services to the extent that they are affected by Section 251. *Id.* § 251.

[21] *Notice* at ¶ 50.

[22] Among the key terms and conditions are those governing the ordering, servicing and billing associated with interconnection.

[23] 47 U.S.C. § 251.

agreements, the '96 Act's goal of quickly establishing robust and effective competition will be delayed.

### B. Points of Interconnection Should Be Maximized [¶¶ 56-63]

[¶ 56] Section 251(c)(2)(B) of the '96 Act imposes on ILECs "the duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network *at any technically feasible point* within the carrier's network."[24] The plain language of this provision makes clear that Congress intended to provide for the maximum possible number of points of interconnection. Thus, the key implementation issue is the determination of the standard by which requests for interconnection are to be judged "technically feasible."

[¶¶ 57-63] To a large extent, the technical feasibility of interconnection requests can be assessed by examining the type and quality of interconnection an ILEC already provides to itself, its affiliates and co-carriers. Section 251(c)(2)(C) provides that such interconnection must be "at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection."[25] Accordingly, CWI endorses the Commission's tentative conclusions that: (1) an ILEC must make interconnection available to a requesting carrier at the same network points it previously has made available to itself or other carriers; and (2)

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[24] *Id.* § 251(c)(2)(B) (emphasis added).

[25] *Id.* § 251(c)(2)(C).

any ILEC employing the same or similar network technologies also should be obligated to make interconnection available at those points.[26]

[¶ 57] By requiring ILECs to provide nondiscriminatory access to the exact type and quality of connections which the ILEC provides itself, the Commission will foreclose the ability of ILECs to engage in the anticompetitive practice of imposing conditions on interconnection simply to give the appearance that interconnection is not feasible. For example, without such a rule an ILEC could attempt to limit points of interconnection by requiring requesting carriers to route their traffic to a single access tandem, even though the ILEC does not route all its own traffic through a single tandem. The proposed rule would preclude an ILEC from refusing to provide this type of routing to carriers requesting interconnection.

[¶ 57] In short, if an ILEC previously has made interconnection available to any carrier or itself at a certain point on the network, interconnection at that point must be considered *de facto* technically feasible for that ILEC and all others similarly situated. Based on this conclusion, CWI contends that, at a minimum, the following points of interconnection should be declared *de facto* technically feasible: tandem switches; end office switches; 911 routing switches; directory assistance and operator services switches; intelligent network, signaling, monitoring, surveillance and fraud control points (including signal control points, signal transfer points, and SMS and service creation environment points), and any other meet point between the customer and the requesting carrier. Assured of the technical feasibility of

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[26] *Notice* at ¶ 57.

providing interconnection at these points, the Commission should establish rules that require ILECs to make them immediately available for interconnection.

[¶¶ 56-58] With regard to interconnection requests that do not satisfy the *de facto* test for technical feasibility set forth above, CWI strongly supports the Commission's tentative conclusion that if an ILEC refuses a carrier's request for interconnection on grounds that the proposed point of interconnection is not "technically feasible," it must bear the burden of proof.[27] In light of this, CWI also agrees with the Commission's tentative conclusion that any point of interconnection requested is presumed to be feasible until the ILEC sufficiently demonstrates otherwise.[28] The logic of these conclusions is borne out by the simple fact that the ILECs have the most complete knowledge of their own networks and the factors which might make a particular interconnection request infeasible. For example, if the burden of proving feasibility were placed on the party seeking interconnection, it would be difficult or impossible to meet in many cases because the only party with the information necessary to assess the technical feasibility of interconnection would have little or no reason to come forward. Moreover, this potential inequity would fall disproportionately on smaller entities that typically have fewer resources to dedicate to engineering disputes. Thus, assigning to the LECs the burden of proving that a request for interconnection is not technically feasible, and establishing a presumption of feasibility until such burden is met, is consistent with the letter and underlying intent of the '96 Act.

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[27] *Id.* at ¶ 58.

[28] *Id.* at ¶ 56.

[¶ 58] Given these conclusions, the Commission must establish guidelines as to the showing an ILEC must make to challenge this presumption of technical feasibility successfully. As part of these guidelines, the Commission should make clear that the fact that there may be costs involved in establishing a point of interconnection does not in and of itself make providing interconnection at that point technically infeasible. Without FCC guidelines, states will not be able to adjudge ILEC challenges consistently and the need for national uniformity, demonstrated herein, will be undermined.

[¶¶ 57-58] In sum, CWI urges the Commission to establish nationally uniform interconnection rules that: (1) require an ILEC to make interconnection available to a requesting carrier at the same network points it previously has made available to itself or other carriers; (2) require any ILEC employing the same or similar network technologies to make interconnection available at those points; (3) place the burden of proving that a request for interconnection is not technically feasible on the ILEC; (4) establish a minimum list of points at which interconnection is deemed to be *de facto* technically feasible; and (5) establish a presumption of feasibility at any requested point. CWI also requests that enforcement of these requirements be made through the Commission's Section 208 formal complaint process, which would provide for an award of damages stemming from an ILEC's refusal to provide interconnection at any technically feasible point.[29]

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[29] 47 U.S.C. § 208.

### C. The FCC Should Set National Unbundling Guidelines [¶¶ 79-80]

[¶¶ 79-80] For the same reasons that national guidelines for interconnection are both necessary and appropriate, a national framework for network unbundling also is required. Thus, CWI agrees with the Commission's conclusion that minimum national requirements governing the unbundling of network elements should be adopted. These guidelines would provide uniform technical requirements and enhance the ability of new entrants to take advantage of economies of scale as they plan and deploy networks stretching across state and LEC boundaries. Minimum national requirements also may facilitate equipment and network interoperability between carriers. Without national rules, variations in technical requirements will affect adversely, and possibly preclude, the ability of new entrants to plan and configure regional and national networks. Moreover, a lack of specific requirements would impair both a state commission's ability to complete arbitrations within the prescribed time-frame and the Commission's ability to intervene, under Section 252, in cases where state commissions fail to act and to evaluate BOC compliance under Section 271.[30]

[¶ 79] National rules also would eliminate the need for duplicative rulemakings. Moreover, such rules would provide a ready framework for states that have not yet acted to unbundle LEC networks. As is the case with respect to the need to establish national interconnection rules, by limiting the number of possible outcomes, national unbundling rules also would expedite the negotiations and arbitration process.

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[30] *Id.* §§ 252, 271.